

RECORDATION NO. 13844-13

Filed 1983

COMPLAN, INC.

2655 CAMPUS DRIVE, SUITE 200, SAN MATEO, CALIFORNIA 94403

SEP 19 1983 1:10 PM
EXECUTIVE OFFICES

September 14, 1983

AREA CODE 415
573-1200

INTERSTATE COMMERCE COMMISSION

32262A071

Mrs. Agatha L. Mergenovich
SecretaryInterstate Commerce Commission
12th Street and Constitution Avenue
Washington, D.C. 20423

RECORDATION NO. 13844-13

Date

SEP 19 1983

Fee \$

20.00

INTERSTATE COMMERCE COMMISSION
ICC Washington, D.C.Re: ICC Finance Docket No. 13844, Leasing Agreement
between ComPlan, Inc. and Westvaco Corporation

Dear Mrs. Mergenovich:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the original and two counterparts of the following documents:

1. Assignment of Lease (a secondary document), dated as of September 1, 1983, between ComPlan, Inc. and Morgan Guaranty Trust Company of New York; and
2. Security Agreement (a secondary document), dated as of September 1, 1983, executed by ComPlan, Inc. for the benefit of Morgan Guaranty Trust Company of New York.

The above referenced secondary documents are being recorded in connection with the following primary document; Leasing Agreement, dated as of November 12, 1982, between ComPlan, Inc. and Westvaco Corporation which was recorded on November 12, 1982, at 3:35 p.m. and assigned the recordation number 13844.

In connection with the recording of the above referenced documents please note the following information:

1. Name and address of Lender: Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015;
2. Name and address of Debtor/Lessor: ComPlan, Inc., 2655 Campus Drive, Suite 200, San Mateo, California 94403;
3. Name and address of Lessee: Westvaco Corporation, 299 Park Avenue, New York, New York 10017;
4. General description of equipment covered by Documents:

Thirty-five 20 thousand gallon tank cars Type: T105

AAR mechanical designation: TMI (DOT-IIIA 100 W3)

Marked: WVCX "Property of ComPlan, Inc., Owner and Lessor"

Symbols and numbers: WVCX 1000-1034

RECEIVED
SEP 19 1 45 PM '83
I.C.C.
FEE OPERATION BR.

Sheryl B. Conrad
Complan

Mrs. Agatha Mergenovich
September 13, 1983
Page Two


I am also enclosing a check in the amount of \$20 made out to the Interstate Commerce Commission as the filing fee for these documents.

A short summary of the documents to appear in the index follows:

- 1) Assignment of Lease between ComPlan, Inc., 2655 Campus Drive, Suite 200, San Mateo, California 94403, as assignor, and Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015, as assignee, dated September 1, 1983, and covering thirty-five tank cars, type T105, leased to Westvaco Corporation and bearing marks WVCX 1000-1034
- 2) Security Agreement executed by ComPlan, Inc. 2655 Campus Drive, Suite 200, San Mateo, California 94403, for the benefit of Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015 and covering thirty-five tank cars, type T105, leased to Westvaco Corporation and bearing marks WVCX 1000-1034.

When the recording of the Lease Assignment and Security Agreement have been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative herewith, and return the remainder of same to her.

Sincerely yours,


William D. Sewall
Attorney

WDS/nji
Enclosure

cc: Ms. Diane Genova
Morgan Guaranty Trust Company of New York

Interstate Commerce Commission
Washington, D.C. 20423

9/19/83

OFFICE OF THE SECRETARY

William D. Sewall, Atty.
ComPlan, Inc.
2655 Campus Drive, Suite 200
San Mateo, Calif. 94403

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/19/83** at **1:50pm**, and assigned re-recording number(s). **13844-A & 13844-B**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 13844-14
Filed 1425

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INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

SECURITY AGREEMENT, dated this 1st day of September, 1983.

WITNESSETH:

WHEREAS, Complan, Inc. a Delaware corporation (the "Borrower") and Morgan Guaranty Trust Company of New York (the "Bank") are parties to a certain Term Loan Agreement, dated as of September 1, 1983 (the "Loan Agreement");

WHEREAS, pursuant to the terms and conditions set forth in the Loan Agreement, the Bank has agreed to make a loan to the Borrower the principal amount of \$1,760,959.62 evidenced by a promissory note of the Borrower (the "Note");

WHEREAS, the execution and delivery of this Security Agreement by the Borrower is a condition precedent to the making of the loan by the Bank pursuant to the terms of the Loan Agreement; and

WHEREAS, the Borrower has duly authorized and directed its appropriate officers to execute this Security Agreement and the same is being executed as an inducement to the Bank to make the loan provided for as set forth in the Loan Agreement;

NOW, THEREFORE, in consideration of these premises, and for other good and valuable consideration, receipt of which is hereby acknowledged, and in order to induce the Bank to enter into the Loan Agreement, it is hereby agreed as follows:

SECTION 1. Security.

a. As security for the payment and fulfillment of its obligations to the Bank hereunder and under the Loan Agreement and the Note, the Borrower hereby grants to the Bank, and hereby mortgages, pledges, hypothecates, assigns and delivers to the Bank, a security interest in, general lien upon and/or right of set-off against the following (hereinafter the "Security"), together with all right, title and interest of the Borrower therein and all rights and remedies which the Borrower might exercise with respect thereto but for the execution of this Agreement:

20,000 gallon tank cars Type: T105
AAR Mechanical Designation: TMI (DOT-IIIA 100 W3)
Marked: WVCX "Property of Complan, Inc., Owner and
Lessor"
Symbols and Numbers: WVCX 1000-1034

and shall include the products, proceeds and accessions of and to any thereof.

b. The Borrower hereby constitutes and appoints the Bank its true and lawful attorney-in-fact, in the place and stead of the Borrower with full power of substitution, either in the Bank's own name or in the name of the Borrower, to ask for, demand, sue for, collect, receive and give acquittance for any and all money due or to become due under and by virtue of the Security, to endorse checks, drafts, orders and other instruments for the payment of money payable to the Borrower on account thereof, to settle, compromise, prosecute or defend any action, claim or proceeding with respect thereto, and to sell, assign, pledge, transfer and make any agreement respecting, or otherwise deal with, the same or take any action or execute any instrument which the Bank may deem necessary or desirable to accomplish the purposes hereof; provided, however, that nothing herein contained shall be construed as requiring or obligating the Bank to make any demand, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim for the moneys due or to become due thereunder, and no action taken by the Bank or omitted to be taken with respect to the said Security shall give rise to any defense, counterclaim or offset in favor of the Borrower or to any claim or action against the Bank. The appointment hereunder by the Borrower of the Bank as attorney-in-fact is irrevocable and coupled with an interest.

c. During the effective period of this Agreement and the Loan Agreement, the Bank shall have all of the rights and remedies of a secured party under the Uniform Commercial Code and under the Intersate Commerce Act (as said laws may at any time be amended), and in addition thereto, the rights and remedies provided for herein, in the Loan Agreement and in any other instrument, document or agreement executed by the Borrower in favor of the Bank.

d. The Borrower hereby irrevocably authorizes the Bank, at the Borrower's own expense, to file such notices, financing statements, mortgages, deeds of trust and other documents as the Bank or its counsel may deem necessary for the perfection of the security interest and liens of the Bank hereunder, without the Borrower's signature, and appoints the Bank as the

Borrower's attorney-in-fact to execute any such statements in the Borrower's name and to perform all other acts which the Bank deems appropriate to perfect and continue the security interest conferred hereby. The Borrower will execute and deliver to the Bank such additional agreements and instruments, in form satisfactory to the Bank's counsel, and do such further acts things of any nature, whether similar to the acts enumerated above or not, as the Bank or its counsel may require or deem advisable to carry into effect the purposes of this Security Agreement or to better assure and confirm unto the Bank its rights, powers and remedies hereunder and under the Loan Agreement.

e. If any Event of Default set forth in the Loan Agreement shall have occurred and be continuing, the Bank may, without being required to give any notice except of intention to sell or of time and place of sale (except such notice as is required by applicable statute and cannot be waived), sell the Security, or any part thereof, at public or private sale, for cash, upon credit or for future delivery, and at such price or prices as the Bank may deem satisfactory, and the Bank may be the purchaser of any and all of the Security so sold and thereafter hold the same, absolutely, free from any right or claim of whatsoever kind, including any equity of redemption of the Borrower. Upon any such sale the Bank shall have the right to deliver, assign and transfer to the purchaser thereof the Security so sold. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right of whatsoever kind, including any equity or right of redemption of the Borrower, which hereby specifically waives all rights of redemption, and any rights of stay or appraisal which the Borrower has or may have under any rule of law or statute now existing or hereafter adopted. Any such public or private sale shall be held at such time or times within ordinary business hours and at such place or places in the Borough of Manhattan, City of New York, State of New York, or elsewhere, or as may be required by applicable law, as the Bank may fix in the notice of such sale. At any such private or public sale the Security may be sold as an entirety or in separate parcels, as the Bank may determine. The Bank shall not be obligated to make any sale pursuant to any such notice. The Bank may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and such sale may without further notice be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Security on credit or for future delivery, the Security so sold may be retained by the Bank until the selling price is paid by the purchaser thereof, but the Bank shall not incur any liability in case of the failure of such purchaser to take up

and pay for the Security so sold and, in case of any such failure, such Security may again be sold upon like notice. The Bank, however, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the security interest granted pursuant to this Security Agreement and sell the Security, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction, the Borrower having been given notice of all such action.

f. The proceeds of any sale or enforcement of all or any part of the Security, and any other case at the time held by the Bank pursuant to the terms of this Security Agreement, shall be applied by the Bank:

(1) First, to the payment of all costs and expenses paid or incurred by the Bank in connection with this Security Agreement or the exercise of any right or remedy hereunder or under the Loan Agreement, including, without limitation, the costs and expenses of any sale or enforcement hereunder and reasonable compensation to the Bank and its agents and counsel;

(2) Second, to the payment of the principal of and the accrued interest on the Note;

(3) Finally, to the payment to the Borrower, its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

g. Notwithstanding any other provision of this Agreement, as long as Westvaco Corporation (the "Lessee") is not in default under the Leasing Agreement dated as of November 12, 1982 between the Borrower and the Lessee, the Lessee shall be entitled to uninterrupted use of the Security on the terms provided in the Lease.

SECTION 2. Successors and Assigns.

a. This Security Agreement shall be binding upon and shall inure to the benefit of the Bank and its successors and assigns.

b. The Bank may assign this instrument or any of its rights and powers hereunder, with all or any of the obligations hereby guaranteed, and may assign and/or deliver to any such assignee any of the Security herefor and, in the event of such assignment, the assignee hereof or of such rights and powers

and of such Security, if any of such Security be so assigned and/or delivered, shall have the rights and remedies as if originally named herein in place of the Bank, and the Bank shall be thereafter fully discharged from all responsibility with respect to any such Security so assigned and/or delivered.

SECTION 3. No Waiver. No failure on the part of the Bank to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Bank of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

SECTION 4. Termination. When all the indebtedness and obligations referred to herein shall have been paid and performed in full, this Security Agreement shall terminate, and the Bank shall forthwith assign, transfer and deliver to the Borrower, against the Borrower's receipt and at the Borrower's expense, the Security and all cash, if any, then held by the Bank hereunder.

SECTION 5. Miscellaneous. Neither the Bank nor any of its respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under this Security Agreement, except for its or their own gross negligence or wilful misconduct. The Bank shall be entitled to rely upon any paper, instrument or document which it in good faith believes to be genuine and correct and to have been signed or sent by the proper person or persons.

SECTION 6. Construction, etc.

a. This Security Agreement, and all rights, obligations and liabilities arising hereunder, shall be governed by and construed in accordance with the law of the State of New York.

b. This Security Agreement may not be altered, amended or modified except in writing executed by the Borrower and the Bank.

IN WITNESS WHEREOF, this Security Agreement has been duly executed as of the day and year first above written.

Form Approved

COMPLAN, INC.

WDS

Counsel

By

Title: Senior Vice President

Address:

2655 Campus Drive

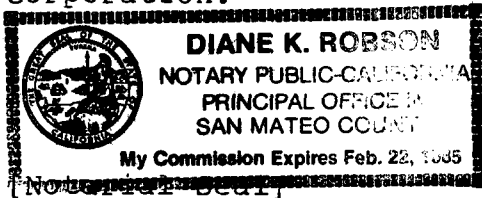
San Mateo, California 94403

Attested:

By Lillian J. Hall
Assistant Secretary

STATE OF California)
COUNTY OF San Mateo) ss.:

On this 12th day of September 1983, before me personally appeared William R. Silver to me personally known, who, being by me duly sworn, says that he is a Sr. Vice President of COMPLAN, INC., a Delaware corporation, that one of the seals affixed to the foregoing instrument is the seal of said Corporation that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



Diane K. Robson
Notary Public

My Commission expires Feb. 22, 1985